IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 19766 of 2007(C)

AGAINST THE ORDER IN EP 481 2003 IN
OS.522/1995 of PRL.MUNSIFF COURT,THRISSUR

.....

PETITIONER:

BALAKRISHNAN,"MURUKA NIVAS"
KORANGATTIL LANE,THRISSUR.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS:

MARY,W/O.KODANKANDATH OUSEPH,
MANALUR VILLAGE, THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN,J

W.P.(C) NO. 19766 of 2007

Dated this the 27th day of June, 2007

JUDGMENT

This writ petition is filed to set aside the order in E.P.481/2003 in O.S.522/1995 of the Principal Munsiff's Court, Thrissur. The order under challenge reads as follows:

"No payment. No evidence. Issue arrest warrant."

2. The learned counsel for the writ petitioner had supplied a copy of the counter filed wherein there is a specific plea regarding no means. It is mandatory under Order XXI Rule 40 of the Code of Civil Procedure that the court is bound to conduct an enquiry as to the means of the judgment debtor and his refusal to pay the amount in order to send him to jail. The order does not show any application of mind made by the learned Munsiff and therefore it suffers from serious infirmity and therefore it is set aside. The matter is remitted back to the executing court and the executing court is directed to consider the matter afresh after

affording an opportunity to the decree holder as well as the respondents to substantiate their respective contentions. The court below should give notice to the decree holder before proceeding with the enquiry.

M.N.KRISHNAN, JUDGE

CSS